

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

September 22, 2004

MCIMETRO ACCESS TRANSMISSION
SERVICES, LLC, Petition for Finding of Public
Convenience and Necessity to Provide
Facilities-Based Local Exchange Services and
Interexchange Services

DOCKET NO. 2004-531

ORDER GRANTING AUTHORITY
TO PROVIDE FACILITIES-BASED
LOCAL EXCHANGE SERVICE AND
INTEREXCHANGE SERVICE

MCIMETRO ACCESS TRANSMISSION
SERVICES, LLC, Proposed Tariff Revision to
Redefine Local Service and Local Calling
Areas, to Remove Material from Tariff, to
Reinstate Several Promotions and to
Introduce MCI Business Services Local
Availability Enhancement Promotion

DOCKET NO. 2004-441

ORDER APPROVING TARIFF CHANGES

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

In this Order, the Commission grants MCImetro Access Transmission Services LLC (MCImetro) the authority to provide facilities-based competitive local exchange service in the area defined by MCImetro as identical to the Portland and Westbrook exchanges of Verizon-Maine. This grant of authority is similar to that previously granted to New England Fiber Communications, LLC (NEFC) d/b/a Brooks Fiber in Docket No. 97-331 except that the service area is somewhat different.¹

We also grant MCImetro the authority to provide interexchange services in Maine. This grant of authority is identical to that previously granted to NEFC in Docket

¹ NEFC's local facilities-based authority was limited to the municipalities of Portland, South Portland and Westbrook. Those municipal boundaries are not coterminous with Verizon's exchange boundaries for the Portland and Westbrook exchanges, which will define the facilities-based service area for MCImetro. The Verizon Portland exchange includes major portions of the municipalities of South Portland and Falmouth, all of the towns of Cape Elizabeth and Long Island and small portions of the towns of Cumberland and Scarborough. The Westbrook exchange includes a portion of the town of Gorham and a small portion of the town of Windham. MCImetro will continue to use the same three NXX codes that it uses presently (228 and 239 for its Portland exchange and 464 for its Westbrook exchange).

NEFC also was assigned an NXX code (686) for Eliot. NEFC donated all but two of the thousand blocks in the 686 NXX back to the pooling administrator. MCImetro now states that neither it nor NEFC is using those blocks. NEFC (or MCImetro) should donate the two blocks to the pooling administrator (NeuStar) and make any necessary arrangements with NANPA to transfer NEFC's code holder status on the 686 NXX to either MCImetro or another entity using the 686 NXX.

No. 97-559. Pursuant to a reorganization of MCI entities approved in bankruptcy proceedings, we recently granted approval to NEFC to abandon service and terminated its authority to provide service in Docket No. 2003-938.

Finally, we approve the tariff filing in Docket No. 2004-441, which adds language defining MCImetro's service area, exchanges and local calling areas for facilities-based local exchange service that are consistent with the authority granted in this order. That filing also makes a number of changes to various services provided by MCImetro, which we also approve.

I. APPROVAL OF APPLICATION TO SERVE

On August 3, 2004, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, MCImetro filed a petition with the Commission requesting expanded authority to provide facilities-based local exchange and interexchange telephone service in Maine. In Docket No. 2002-306, MCImetro has previously obtained authority from the Commission to provide UNE-P local service. Therefore, MCImetro has previously provided reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

II. SERVICE TERRITORY

A. Interexchange Service Authority

MCImetro has requested authority to provide interexchange service throughout the state. We grant that authority.

B. Local Service Authority

MCImetro requested authority to provide facilities-based local exchange service in the areas served by the Portland and Westbrook exchanges of Verizon-Maine. If MCImetro wishes to expand its facilities-based authority to include services requiring MCIMETRO to obtain additional numbering resources, it shall seek approval pursuant to 35-A M.R.S.A. §2102, requesting the Commission to amend this Order. Any such request must specify the specific exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas. MCImetro retains statewide authority, granted in Docket No. 2002-306, to provide local exchange service through resale and through the purchase of unbundled network platforms (UNE-P).

III. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it would not be possible for MCImetro's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a “rural telephone company” as defined in 47 U.S.C. § 153(37), the “rural exemption” of 47 U.S.C. § 251(f) will apply. All of Maine’s independent incumbent local exchange carriers are “rural telephone companies.” A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement “is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254...”

On August 27, 1997, in Docket No. 97-502, the Commission approved an interconnection agreement between New England Telephone and Telegraph Company d/b/a NYNEX (now Verizon of New England d/b/a Verizon Maine) and NEFC. On November 13, 2002, in Docket No. 2002-599, the Commission approved Amendment No. 1 to the agreement, to add MCImetro Access Transmission Services, LLC (MCImetro) as a party to that agreement. On April 16, 2004, in Docket No. 2004-52, the Commission approved Amendment No. 2 to the NEFC-MCImetro agreement. As a condition of providing local exchange service, MCImetro must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

IV. PAYMENT OF ACCESS CHARGES

Our approval of MCImetro’s application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules. The Commission has granted authority to MCImetro to provide interexchange service both as a facilities-based carrier and as a switchless reseller.² If MCImetro provides facilities-based interexchange service, it must pay access charges directly to local exchange carriers. However, switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, MCImetro must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. MCImetro shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

² We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

The Commission grants MCImetro a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because MCImetro's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, MCImetro must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment and such other information requested by the Commission.³ If MCImetro resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, MCImetro shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

VI. OTHER REQUIREMENTS

MCImetro shall comply with all applicable rules of the Commission and statutes of the State of Maine.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of MCImetro to provide facilities-based competitive local exchange telephone service in the service areas defined as the Portland and Westbrook exchanges of Verizon-Maine and interexchange telephone service in Maine; and

2. Exempt MCImetro from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt MCImetro from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that MCImetro shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of MCIMETRO or of any entity that owns more than 50% of MCImetro. MCImetro shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. MCImetro shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, MCImetro shall amend its rate schedules and terms and conditions to reflect any change in identity;

³The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

4. Order that MCImetro shall file with the Commission all rates, terms and conditions that may be necessary for it to provide the services authorized by this Order;

5. Order that MCImetro, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers. MCImetro shall notify the Commission and all local exchange carriers from which it obtains access services of any change in its underlying carrier within 30 days following the change. Any underlying carrier used by MCImetro must have the authority to provide intrastate interexchange service in Maine. MCImetro shall immediately inform the Commission and all local exchange carriers in the State of Maine from which it will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time MCImetro shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that MCImetro shall comply with all applicable statutes of the State of Maine and rules of the Commission, including the requirements in 35-A M.R.S.A. § 7307 and Chapter 292 of the Commission's Rules that interexchange carriers provide notice to all affected customers of any increase to any rate at least 25 days prior to the increase taking effect; and the requirement in Chapter 291 of the Commission's Rules that competitive local exchange carriers provide notice to all affected customers of any increase to any rate at least 25 days prior to the increase taking effect.

7. Lift the suspension of MCImetro's filing on July 2, 2004 in Docket No. 2004-441 of proposed changes to its rate schedule and terms and conditions, and approve that filing EXCEPT for 1st Revised Page 4.2 filed on that date; we approve instead the replacement 1st Revised Page 4.2 labeled "version 2" filed on August 18, 2004.

Dated at Augusta, Maine, this 22nd day of September, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.